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OFFICE OF THE SECRETARY

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20 April, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20665

ORIGINAL

Re: *Ex parte* in CC Docket No. 96-98

ORIGINAL

Dear Ms. Salas:

Qwest Corp. submitted an *ex parte* in this proceeding on June 12, 2000 in which it presented data from the Local Exchange Routing Guide ("LERG") regarding the number of NXX codes obtained by CLECs in its territory. Other ILECs also have presented, or proposed the use of, LERG data that they claim show where CLECs are using their own switches to offer local telecommunications services.

WorldCom files this *ex parte* to caution the Commission that the simplistic interpretation of those data offered by the ILECs is misleading and significantly overstates both the amount and the geographic breadth of facilities-based local services provided by CLECs. These data are more misleading the smaller the market analyzed, and should not be used as the basis for considering expanding the switching exception beyond the top 50 MSAs. In fact, as explained below, market activities strongly indicate that CLECs would be impaired in their ability to offer telecommunications services in markets smaller than the top 50 MSAs if they were denied access to unbundled ILEC switching.

LERG data do no more than identify where CLECs have obtained numbers. They do not show that CLECs are actually using the numbers and their own switches to offer services, nor do they show the type of services offered by the CLECs with their switches. They would be misleading as evidence of where CLEC service and sales are taking place. As Qwest, itself, admits in its *ex parte* letter of July 13, 2000:

> the staff asked if Qwest has a way of knowing how many of the codes assigned were actively being used by the CLECs. Once an NXX is listed as effective in the LERG, Qwest ensures its switches are programmed to route traffic with those NXXs to the CLEC switch, however we do not measure the traffic sent to the CLEC switch.

There are many reasons why CLECs sometimes obtain NXXs but either do not use them (and their own switches) to provide service or use them (and their switches) only to provide very limited service. For example:

- CLECs frequently obtain NXXs prior to deploying switches and/or actually providing local service. This can occur for a variety of reasons. CLECs frequently obtain numbers in advance of offering service in order to be sure they will have numbers when they actually launch service. But CLECs often must cut back their business plans or delay service launch in particular markets for financial reasons, because of serious loop provisioning problems, or for other reasons. For firms operating in multiple geographic markets, these curtailments or launch delays are more likely to occur in smaller markets than in the top 50 markets, since the revenues foregone by delay are likely to be smaller in the smaller markets.

- CLECs who employ a strictly "on-net" business strategy, either in all geographic markets or in selective geographic markets, run their fiber in downtown business districts but will serve only those customers that are actually located on their fiber ring. They will obtain NXXs, which are necessary to serve those customers and therefore will be included in the LERG database, but they will not be serving – and it may not be economically viable to serve – any customers who are not on their fiber ring.

- Frequently, in order to get extended "local call" coverage for ISP customers, CLECs will obtain NXXs in distant rate exchanges within the LATA to provision what is sometimes called "virtual FX service." For example, WorldCom has a single switch in Maine, located in Portland, but it has obtained 60 NXXs around the state so that its ISP customers can offer a "local dial-up" capability to their customers all around the state. Thus, WorldCom has NXXs in Bangor, but does not offer switched based services to Bangor customers.

For all of these reasons, LERG data cannot be used to reliably indicate where CLECs are using their own switches to offer local service.

Qwest and other ILECs also continue to argue that the existence of CLEC switches in markets smaller than the top 50 MSAs is evidence that CLECs would not be impaired in their ability to offer telecommunications services in the absence of access to unbundled ILEC switching in those markets. This is contrary to what is actually occurring in the marketplace. Although competitive entry into local telecommunications markets is just in its infancy, already the CLEC industry has been marked by significant consolidation as CLECs have found that they cannot survive with less than a regional or super-regional presence. According to an article entitled "Safety in Numbers," by Elisabeth Staff Miller, in the June 19, 2000 issue of Telephony:

> Competitive local exchange carriers across the country are merging, hoping to avoid the recent spate of CLEC failures.
> Gabriel Communications joined with TriVergent Communications last week, combining its Midwestern and Southeastern territories into one region... The driving force for the transaction is taking the business scale and scope to a higher level, said David Solomon, CEO for Gabriel.

> Earlier in June, Cavalier Telephone, Conversent Communications and Florida Digital Network joined to form elantic, a CLEC spanning from Maine to Florida.
> By merging, CLECs can create a much stronger regional play, said Steven Weinberg, analyst for New Paradigm Resources Group. To survive in this competitive market, CLECs don't have the time to build out their own networks; instead, they have to expand by merging, he added.

These merging CLECs generally have not focused on the largest markets. Their consolidation shows that, beyond the largest MSAs, the underlying market economics does not support deployment of switches by multiple CLECs. It is noteworthy that carriers have chosen to merge rather than to share one another's switches. In markets beyond the top 50, it typically will not be viable for new entrants to deploy their own switches or to rely on those of other CLECs. Access to unbundled ILEC switching is necessary for CLECs to serve customers in those markets.

Sincerely,

Chuck Goldfarb

Chuck Goldfarb
Director
Law and Public Policy

cc. Dorothy Attwood
Jake Jennings
Katherine Farroba
Jonathan Reel
Christopher Libertelli
Jordan Goldstein
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